

PUBLIC EDUCATION EMPLOYMENT REVISIONS

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Ken Ivory

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends provisions related to school employees and volunteers.

Highlighted Provisions:

This bill:

- ▶ repeals deadlines for filing a petition to nominate an individual to voting membership on the Utah Professional Practices Advisory Commission (UPPAC);
- ▶ enacts provisions giving the State Board of Education discretion to take disciplinary action against an educator's license;
- ▶ requires that an individual be given a copy of rules that govern a UPPAC hearing;
- ▶ requires that the board make rules to protect the rights of certain individuals during a UPPAC hearing;
- ▶ requires that a local education agency inform individuals of resources to look up a school employee's criminal background;
- ▶ amends the definition of "unsupervised volunteer assignment";
- ▶ exempts certain records on a website maintained by the State Board of Education from being expunged; and
- ▶ makes technical corrections.

Money Appropriated in this Bill:

None

Other Special Clauses:



28 None

29 **Utah Code Sections Affected:**

30 AMENDS:

31 **53A-6-303**, as enacted by Laws of Utah 1999, Chapter 108

32 **53A-6-501**, as repealed and reenacted by Laws of Utah 2015, Chapter 311

33 **53A-6-604**, as last amended by Laws of Utah 2015, Chapter 311

34 **53A-15-1511**, as enacted by Laws of Utah 2016, Chapter 199

35 **63G-4-106**, as enacted by Laws of Utah 2016, Chapter 312

36 ENACTS:

37 **53A-6-406**, Utah Code Annotated 1953



39 *Be it enacted by the Legislature of the state of Utah:*

40 Section 1. Section **53A-6-303** is amended to read:

41 **53A-6-303. Nominations -- Appointment of commission members --**
42 **Reappointments.**

43 (1) (a) The board shall adopt rules establishing procedures for nominating and
44 appointing individuals to voting membership on UPPAC.

45 ~~[(b) Nomination petitions must be filed with the state superintendent prior to June 16~~
46 ~~of the year of appointment.]~~

47 ~~[(c)]~~ (b) A nominee for appointment as a member of UPPAC as an educator must have
48 been employed in the representative class in the Utah public school system or a private school
49 accredited by the board during the three years immediately preceding the date of appointment.

50 (2) The state superintendent of public instruction shall appoint the members of the
51 commission.

52 (3) Appointments begin July 1 and are for terms of three years and until a successor is
53 appointed.

54 (4) Terms of office are staggered so that approximately 1/3 of UPPAC members are
55 appointed annually.

56 (5) A member may not serve more than two terms.

57 Section 2. Section **53A-6-406** is enacted to read:

58 **53A-6-406. Public access to school employee criminal information.**

59 (1) As used in this section, "local education agency" or "LEA" means a school district
60 or charter school.

61 (2) An LEA shall include on the LEA's website:

62 (a) a link to one or more websites that provide publicly available information on
63 criminal charges and convictions in the state, including a website maintained by the courts, a
64 newspaper, or another person; and

65 (b) the following statement: "The following are links to publicly available websites
66 where a parent or guardian may search whether a teacher or school employee has been charged
67 or convicted of a crime. These external websites are not maintained by your school but are only
68 provided for informational purposes."

69 Section 3. Section **53A-6-501** is amended to read:

70 **53A-6-501. Board disciplinary action against an educator.**

71 (1) (a) The board shall direct UPPAC to investigate an allegation, administrative
72 decision, or judicial decision that evidences an educator is unfit for duty because the educator
73 exhibited behavior that:

74 (i) is immoral, unprofessional, or incompetent; or

75 (ii) violates standards of ethical conduct, performance, or professional competence.

76 (b) If the board determines an allegation or decision described in Subsection (1)(a)
77 does not evidence an educator's unfitness for duty, the board may dismiss the allegation or
78 decision without an investigation or hearing.

79 (2) The board shall direct UPPAC to investigate and allow an educator to respond in a
80 UPPAC hearing if the board receives an allegation that the educator:

81 (a) was charged with a felony of a sexual nature;

82 (b) was convicted of a felony of a sexual nature;

83 (c) pled guilty to a felony of a sexual nature;

84 (d) entered a plea of no contest to a felony of a sexual nature;

85 (e) entered a plea in abeyance to a felony of a sexual nature;

86 (f) was convicted of a sexual offense under Title 76, Chapter 5, Part 4, Sexual
87 Offenses, against a minor child;

88 (g) engaged in sexually explicit conduct, as defined in Section [76-5b-103](#), with a
89 student who is a minor; or

90 (h) engaged in sexually explicit conduct, as defined in Section 76-5b-103, with a
91 student who is:

- 92 (i) not a minor; and
- 93 (ii) enrolled in a school where the educator is or was employed.

94 (3) Upon notice that an educator allegedly violated Section 53A-6-502, the board shall
95 direct UPPAC to:

- 96 (a) investigate the alleged violation; and
 - 97 (b) hold a hearing to allow the educator to respond to the allegation.
- 98 (4) Upon completion of an investigation or hearing described in this section, UPPAC
99 shall:

- 100 (a) provide findings to the board; and
 - 101 (b) make a recommendation for board action.
- 102 (5) (a) Except as provided in Subsection (5)(b), upon review of UPPAC's findings and
103 recommendation, the board may:

- 104 (i) revoke the educator's license;
- 105 (ii) suspend the educator's license;
- 106 (iii) restrict or prohibit the educator from renewing the educator's license;
- 107 (iv) warn or reprimand the educator;
- 108 (v) enter into a written agreement with the educator that requires the educator to
109 comply with certain conditions;
- 110 (vi) direct UPPAC to further investigate or gather information; or
- 111 (vii) take other action the board finds to be appropriate for and consistent with the
112 educator's behavior.

113 (b) Upon review of UPPAC's findings and recommendation, the board shall revoke the
114 license of an educator who:

- 115 (i) was convicted of a felony of a sexual nature;
- 116 (ii) pled guilty to a felony of a sexual nature;
- 117 (iii) entered a plea of no contest to a felony of a sexual nature;
- 118 (iv) entered a plea in abeyance to a felony of a sexual nature;
- 119 (v) was convicted of a sexual offense under Title 76, Chapter 5, Part 4, Sexual
120 Offenses, against a minor child;

- 121 (vi) engaged in sexually explicit conduct, as defined in Section 76-5b-103, with a
122 student who is a minor;
- 123 (vii) engaged in sexually explicit conduct, as defined in Section 76-5b-103, with a
124 student who is:
- 125 (A) not a minor; and
126 (B) enrolled in a school where the educator is or was employed; or
- 127 (viii) admits to the board or UPPAC that the applicant committed conduct that amounts
128 to:
- 129 (A) a felony of a sexual nature; or
130 (B) a sexual offense or sexually explicit conduct described in Subsection (5)(b)(v), (vi),
131 or (vii).
- 132 (c) The board may not reinstate a revoked license.
133 (d) Before the board takes adverse action against an educator under this section, the
134 board shall ensure that the educator had an opportunity for a UPPAC hearing.
- 135 (e) Except as provided in Subsection (5)(b), the board has discretion to take
136 disciplinary action against an educator's license and is not required to follow a recommendation
137 from UPPAC.
- 138 (f) The board shall make rules to administer this section, including rules to regulate
139 action taken by the board under Subsection (5)(a)(vii).
- 140 Section 4. Section 53A-6-604 is amended to read:
- 141 **53A-6-604. Rules for conducting hearings -- Standard of proof.**
- 142 (1) The board and each local school board shall adopt rules for the conduct of hearings
143 to ensure that requirements of due process are met.
- 144 (2) An accused party shall be provided not less than 15 days before a hearing with:
- 145 (a) notice of the hearing;
146 (b) the law, rule, or policy alleged to have been violated;
147 (c) sufficient information about the allegations and the evidence to be presented in
148 support of the allegations to permit the accused party to prepare a meaningful defense; and
149 (d) ~~[a copy of]~~ (i) an Internet address where the accused party can access the rules
150 under which the hearing will be conducted[-]; or
151 (ii) at the request of the accused party, a copy of the rules under which the hearing will

152 be conducted.

153 (3) If an accused party fails to request a hearing within 30 days after written notice is
154 sent to the party's address as shown on the records of the local board, for actions taken under
155 the auspices of a local board, or on the records of the board, for actions taken under the
156 auspices of the board, then the accused party shall be considered to have waived the right to a
157 hearing and the action may proceed without further delay.

158 (4) Hearing fact finders shall use the preponderance of evidence standard in deciding
159 all questions unless a higher standard is required by law.

160 (5) Unless otherwise provided in this title, the decisions of state and local boards are
161 final determinations under this section, appealable to the appropriate court for review.

162 (6) The board shall make rules to protect the rights of the following during a hearing:

163 (a) a victim who is younger than 18 years old; and

164 (b) a victim who receives special education services from an LEA under the

165 Individuals with Disabilities Education Act, 20 U.S.C. Sec. 1400 et seq.

166 Section 5. Section **53A-15-1511** is amended to read:

167 **53A-15-1511. Reference check requirements for LEA applicants and volunteers.**

168 (1) As used in this section:

169 (a) "Child" means an individual who is younger than 18 years old.

170 (b) "LEA applicant" means an applicant for employment by an LEA.

171 (c) "Physical abuse" means the same as that term is defined in Section [78A-6-105](#).

172 (d) "Potential volunteer" means an individual who:

173 (i) has volunteered for but not yet fulfilled an unsupervised volunteer assignment; and

174 (ii) during the last three years, has worked in a qualifying position.

175 (e) "Qualifying position" means paid employment that requires the employee to

176 directly care for, supervise, control, or have custody of a child.

177 (f) "Sexual abuse" means the same as that term is defined in Section [78A-6-105](#).

178 (g) "Student" means an individual who:

179 (i) is enrolled in an LEA in any grade from preschool through grade 12; or

180 (ii) receives special education services from an LEA under the Individuals with

181 Disabilities Education Act, 20 U.S.C. Sec. 1400 et seq.

182 (h) (i) "Unsupervised volunteer assignment" means a volunteer assignment at an LEA

183 that allows the volunteer significant unsupervised access to a student.

184 (ii) "Unsupervised volunteer assignment" includes a volunteer assignment in which
185 another volunteer or potential volunteer is present.

186 (2) (a) Before hiring an LEA applicant or giving an unsupervised volunteer assignment
187 to a potential volunteer, an LEA shall:

188 (i) require the LEA applicant or potential volunteer to sign a release authorizing the
189 LEA applicant or potential volunteer's previous qualifying position employers to disclose
190 information regarding any employment action taken or discipline imposed for the physical
191 abuse or sexual abuse of a child or student by the LEA applicant or potential volunteer;

192 (ii) for an LEA applicant, request that the LEA applicant's most recent qualifying
193 position employer disclose information regarding any employment action taken or discipline
194 imposed for the physical abuse or sexual abuse of a child or student by the LEA applicant;

195 (iii) for a potential volunteer, request that the potential volunteer's most recent
196 qualifying position employer disclose information regarding any employment action taken or
197 discipline imposed for the physical abuse or sexual abuse of a child or student by the potential
198 volunteer; and

199 (iv) document the efforts taken to make a request described in Subsection (2)(a)(ii) or
200 (iii).

201 (b) An LEA may not hire an LEA applicant who does not sign a release described in
202 Subsection (2)(a)(i).

203 (c) An LEA may not give an unsupervised volunteer assignment to a potential
204 volunteer who does not sign a release described in Subsection (2)(a)(i).

205 (d) An LEA shall use the LEA's best efforts to request information under Subsection
206 (2)(a)(ii) or (iii) before:

207 (i) hiring an LEA applicant; or

208 (ii) giving an unsupervised volunteer assignment to a potential volunteer.

209 (e) In accordance with state and federal law, an LEA may request from an LEA
210 applicant or potential volunteer other information the LEA determines is relevant.

211 (3) (a) An LEA that receives a request described in Subsection (2)(a)(ii) or (iii) shall
212 use the LEA's best efforts to respond to the request within 20 business days after the day on
213 which the LEA received the request.

214 (b) If an LEA or other employer in good faith discloses information that is within the
215 scope of a request described in Subsection (2)(a)(ii) or (iii), the LEA or other employer is
216 immune from civil and criminal liability for the disclosure.

217 Section 6. Section **63G-4-106** is amended to read:

218 **63G-4-106. Access to information on state-controlled websites.**

219 (1) As used in this section and Sections **63G-4-107** and **63G-4-108**:

220 (a) "Administrative disciplinary action" means, subject to the limitations described in
221 Section **63G-4-102**, state agency action against the interest of an individual that affects a legal
222 right, duty, privilege, immunity, or other legal interest of an individual, including agency action
223 to deny, revoke, suspend, modify, annul, withdraw, or amend an authority, right, or license.

224 (b) "Record of administrative disciplinary action" means a notice, request, complaint,
225 report, order, or other information related to an administrative disciplinary action.

226 (c) (i) "State-controlled website" means a website:

227 [(i)] (A) operated by[: ~~(A) an agency; or (B) a third party~~] an agency, or, pursuant to a
228 contract with an agency under which the agency controls the data available to the public, a third
229 party; and

230 [(ii)] (B) that includes personally identifiable information.

231 (ii) "State-controlled website" does not include a website maintained by the State
232 Board of Education that provides a record of an administrative disciplinary action involving the
233 license of a teacher under Title 53A, Chapter 6, Educator Licensing and Professional Practices
234 Act.

235 (2) Unless otherwise required by federal law, if an agency maintains, on a
236 state-controlled website available to the public, a record of administrative disciplinary action,
237 the agency shall remove the record of administrative disciplinary action from public access on
238 the state-controlled website by no later than 10 years from the date:

239 (a) a final order related to the administrative disciplinary action was issued; or

240 (b) the administrative disciplinary action was commenced, if no final order was issued
241 related to the administrative disciplinary action.

242 (3) Notwithstanding Subsection (2):

243 (a) a record of administrative disciplinary action issued in accordance with this chapter
244 shall maintain its record classification pursuant to Subsection **63G-2-301(2)(c)** or **(3)(t)**; and

245 (b) a person may make a request for the record of administrative disciplinary action in
246 accordance with Title 63G, Chapter 2, Government Records Access and Management Act.

Legislative Review Note
Office of Legislative Research and General Counsel